IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3669 OF 2005

IN

SUMMARY SUIT NO.6274 OF 1999

Aftab Altaf Kazi. ...Plaintiff.

vs.

Altaf Fazaluddin Kazi. ...Defendant

Mrs.Amarjit Kaur, for Plaintiff.

Mrs.Archana Khan, for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 26th June,2007.

P.C.:-

1. This is a notice of motion taken out by the original defendant for setting aside the exparte decree passed by this Court. The decree was passed on 28.4.2000. It is an admitted

position that the defendant who has taken out this notice of motion had filed an undertaking before the Family Court on 29.7.2004 that he will pay sum of Rs.10,000/- per month on 10th day of every month with effect from September,2004 towards maintenance of the wife and also towards the maintenance of minor child. It is also admitted position that the defendant has not abided by this undertaking. It is also an admitted position that till today the defendant has not even made an application to the family Court for being relieved of the undertaking because he is not in a position to abide by the undertaking. The net result is the defendant is neither abiding by his undertaking nor has he applied to the Court before whom the undertaking was given for permission to withdraw his undertaking. Obviously, the defendant has committed civil contempt of the family Court which is a Court subordinate to this Court and he has taken out this notice of motion without purging that contempt.

2. I put it to the learned Counsel appearing for defendant whether the defendant is willing to purge the contempt, if not by making payment but at least by depositing the amount in the Court, the learned Counsel expressed inability of the defendant to do so. In my opinion, as the defendant has clearly committed contempt of the Court and he continues to refuse to abide by his undertaking, unless and until the defendant purges his contempt he cannot be heard. The notice of motion is disposed of. However, it is clarified that in case the defendant abides by his undertaking or he is permitted by the competent Court to be relieved of his undertaking the defendant shall be entitled to take out a fresh notice of motion for the same relief.